

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

Willard Wevley and
Paula Wevley,

BKY 04-61105

Debtors

In Chapter 11

**NOTICE OF HEARING AND MOTION FOR ENTRY OF ORDER GRANTING
EXPEDITED RELIEF AND AUTHORIZING DEBTORS TO SATISFY PREPETITION
CLAIMS OF CERTAIN CREDITORS**

To: The Office of the United States Trustee and the Other Entities Specified in Local Rule 9013-3 and 2002-1 (b).

1. The debtors herein, through the undersigned attorney, move the Court for the relief requested below and give notice of hearing.
2. The Court will hold a hearing on this motion at 9:45 a.m. on September 29, 2004 before the Honorable Dennis D. O'Brien, US Bankruptcy Court, 204 U.S. Courthouse, 118 South Mill Street, Fergus Falls, Minnesota, or as soon thereafter as counsel can be heard.
3. The Debtors are requesting that the Motion for Entry of Order Granting Expedited Relief and Authorizing Debtors To Satisfy Prepetition Claims of Certain Creditors be heard on an expedited basis. Because of the expedited nature of the hearing, movants do not object to any responses being delivered not later than the time set for hearing. **Unless a response opposing the motion is timely made at the hearing, the Court may grant the motion.**
4. The Court has jurisdiction over the matter pursuant to 28 U.S.C. §§ 157 and 1334, Rule 5005 of the Federal Rules of Bankruptcy Procedure and Local Rule 1070-1. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(M). Venue of the Debtors' Chapter 11 case is proper pursuant to 28 U.S.C. §§ 1408 and 1409. The petition commencing this Chapter 11 case was filed on September 20, 2004. This case is currently pending before this Court.
5. The debtors are the owners and operators of Cardina-Behrens Funeral Home. The business consists of the normal services of funeral homes including but not limited to body preparation for burial, casket selection, memorial services, internment and related services.
6. The debtor, Willard Wevley, is the trustee as to numerous prepaid funeral trusts. The current value of these pre-paid plans are in excess of \$1,200,000.00. These

trusts are established by persons wishing to make arrangements for their funerals prior to their demise.

7. Debtors have experienced difficulty in the last several months of operations as a result of a decline in the mortality rate within their business radius.
8. As a result, several product and service vendors have required the debtors to operate on a cash basis. Included vendors would be a casket manufacturer, grave excavator and churches for service fees.
9. At the time of the filing, Debtors had outstanding, certain payments to the creditors listed on Exhibit A. These checks were issued to pay for current product or service offerings in the course of ordinary business. A new checking account has been opened.
10. In order to maintain the business of the Debtors, additional products and services of the same type for pending funeral services for families of current decedents will be required from the same entities.
11. In Addition, several of the outstanding checks represent the transfer of decedent family funds which are handled as a matter of convenience for the family by the debtors, including organist fees, meal services at churches, etc.
12. Failure to maintain orderly, timely and respectful services to the families of decedents would have a devastating effect on the business of the debtors.
13. Notice of this Motion was provided to the entities to be served pursuant to Local Rule 9013-3. The Debtors submit that good faith cause exists for the expedited relief sought herein. Given the nature of the relief requested, the Debtors also submit that cause exists to dispense with any further notice of this motion.

WHEREFORE, the Debtors respectfully request entry of an order granting expedited relief and authorizing the payment of certain pre-petition charges and granting such other and further relief as in just and proper.

Dated: September 28, 2004

Velde Law Firm, Ltd

By: 

David G Velde

1118 Broadway

Alexandria MN 56308

320.763.6561

MN Bar No. 147205

Attorney for the Debtors

VERIFICATION

I, Willard Wevley, declare under penalty of perjury that the foregoing is true and correct according to the best of my knowledge, information and belief.

Dated: September 28, 2004


Willard Wevley

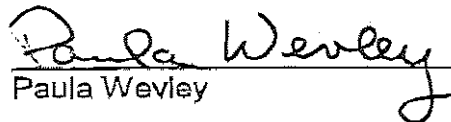

Paula Wevley

EXHIBIT A

1.	Janet Mattson Organist	\$ 50.00
2.	Batesville Casket Company (2) Caskets	\$1,710.00
3.	Zion Lutheran Church (2) Church fees	\$ 285.00
4.	Lake Construction (2) Grave Digging	\$ 800.00
TOTAL		\$2,845.00

**UNITED STATES BANKRUPTCY COURT
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In Re:

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BKY 04-61105

Debtors

In Chapter 11

**MEMORANDUM OF LAW IN SUPPORT OF MOTION
FOR ENTRY OF ORDER GRANTING EXPEDITED RELIEF AND AUTHORIZING
DEBTORS TO SATISFY PREPETITION CLAIMS OF CERTAIN CREDITORS**

FACTUAL BACKGROUND

The factual support for the Debtors' Motion and this Memorandum is set forth in the verified Motion which may be supplemented by testimony at the hearing.

LEGAL ARGUMENT

Section 105(a) of the Bankruptcy Code grants the Court broad authority to enforce the Bankruptcy Code's provisions either under the specific statutory language of the Bankruptcy Code or under equitable law doctrines. "The ability of the Bankruptcy Court to authorize the payment of prepetition debt when such payment is needed to facilitate the rehabilitation of the debtor is not a novel concept." *In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989). This equitable common law principle "was first articulated by the United States Supreme Court in *Miltenberger v. Logansport, C. & S.W.R. Co.*, 106 U.S. 286 (1882), and is commonly referred to as either the doctrine of necessity or the necessity of payment rule." *In re Ionosphere Clubs, Inc.* 98 B.R. at 176. "The Supreme Court, the Third Circuit and the District of Delaware all recognize the court's power to authorize payment of pre-petition claims when such payment is necessary for the debtor's survival during chapter 11." *In re Just For Feet, Inc.*, 242 B.R. 821, 825 (Bankr. D. Del. 1999). "The necessity of payment doctrine recognizes that paying certain pre-petition

claims may be necessary to realize the goal of chapter 11 - a successful reorganization.”
Id. at 825-26.

Under the doctrine of necessity, a bankruptcy court may exercise its equitable power to authorize a debtor to pay certain critical prepetition claims, even though such payment is not explicitly authorized under the Bankruptcy Code. *See In re Columbia Gas System*, 136 B.R. 930, 939 (Bankr. D. Del. 1992) (*citing In re Lehigh & New England Rwy. Co.*, 657 F.2d 570, 581 (3d Cir. 1981) (recognizing that “if payment of a prepetition claim ‘is essential to the continued operation of [the debtor], payment may be authorized.’”)).

Based upon the foregoing, the Debtors submit that the relief requested herein is essential, appropriate and in the best interests of the Debtors and all parties in interest.

Notice of the expedited hearing on the motion was provided to all entities entitled to receive notice under Local Rule 9013-3. Prompt resolution of this ministerial matter is necessary to allow the Debtors to focus on the numerous other matters vying for their attention during the first few weeks of their case. In light of this need, the Debtors request approval of an expedited hearing on this matter.

CONCLUSION

The Debtors request that the Motion be granted.

Dated: September 28, 2004

Velde Law Firm, Ltd.

By: 

David G. Velde

1118 Broadway

Alexandria, MN 56308

Phone: 320.763.6561

MN Bar No. 147205

Attorney for the Debtors

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:

Willard Wevley and
Paula Wevley,

BKY 04-61105

Debtors

In Chapter 11

**ORDER GRANTING EXPEDITED RELIEF AND AUTHORIZING DEBTORS TO
SATISFY PREPETITION CLAIMS OF CERTAIN CREDITORS**

This matter came on for hearing on September 29, 2004, on the Debtor's Motion for Entry of Order Granting Expedited Relief and Authorizing Debtors To Satisfy Prepetition Claims of Certain Creditors. David G. Velde appeared for the Debtors, and other appearances were noted in the record. Based on the pleadings, testimony and arguments of counsel,

IT IS ORDERED:

1. The Motion is granted in its entirety.
2. The Debtors are hereby authorized, but not directed, to pay Certain Creditors (as defined in the Motion) not to exceed \$2,845.00.
3. Nothing in this Order of the Motion shall be construed as prejudicing the Debtors' right to dispute or contest the amount of or basis for any claims against the Debtors relating to Certain Creditors.
4. Nothing in this Order shall be deemed to constitute postpetition assumption of any agreement pursuant to 11 U.S.C. § 365.

Dated: _____, 2004

Judge Dennis D. O'Brien
United States Bankruptcy Court

AFFIDAVIT OF SERVICE BY MAIL

STATE OF MINNESOTA)
) ss.
COUNTY OF DOUGLAS)

Colleen Ouimet, of the City of Alexandria, County of Douglas, in the State of Minnesota, being duly sworn, says that on the 28th of September, 2004, she served the attached :

1. Notice of Hearing and Motion for Entry of Order Granting Expedited Relief and Authorizing Debtors to Satisfy Prepetition Claims of Certain Creditors.
2. Memorandum of Law in Support of Motion for Entry of Order Granting Expedited Relief and Authorizing Debtors to Satisfy Prepetition Claims of Certain Creditors.
3. Order Granting Expedited Relief and Authorizing Debtors to Satisfy Prepetition Claims of Certain Creditors.

on the following by mailing to him or her a copy thereof, enclosed in an envelope, postage prepaid, and by depositing same in the post office at Alexandria, Minnesota, directed to said party at:

Willard W. and Paula G. Wevley
dba Cardini-Behrens Funeral Home
PO Box 129
Menahga, MN 56464

Habbo G. Fokkena
United States Trustee
U.S. Courthouse Suite 1015
300 South Fourth Street
Minneapolis, MN 55415

District Counsel of the Internal Revenue
Service
Stop 5700
316 North Robert Street
St. Paul, MN 55101

The District Director of the Internal Revenue
Service
Stop 5700
316 North Robert Street
St. Paul, MN 55101

United States Trustee's Office
Attn: Ms. Sara Wencil
U.S. Courthouse Suite 1015
300 South Fourth Street
Minneapolis, MN 55416

United States Attorney
District of Minnesota
600 U.S. Courthouse
300 South Fourth Street
Minneapolis, MN 55415

Minnesota Department of Revenue
Collection Division - Bankruptcy Section
PO Box 64447
St. Paul, MN 55164-0447

First National Bank of Menahga
Attn: Mr. Roger Hollrud
PO Box 250
Menahga, MN 56464

John Deere Credit
PO Box 77000
Detroit, MI 48277-0039

Paula K. Behrens
c/o Merrill Lynch Private Client Group
PO Box 2445
Fargo, ND 58108-9968

State Bank of Fargo
PO Box 10877
Fargo, ND 58106-0877

Batesville Casket Company
4198 Collections Center Drive
Chicago, IL 60693

State Bank of Park Rapids
PO Box 31
Park Rapids, MN 56464

First Equity Card
PO Box 84075
Columbus, GA 31901

American National Bank
PO Box 472
Alexandria MN 56308

Donahue Harley Davidson
3555 Shadowwood Drive NE
Sauk Rapids, MN 56739

Retailers National Bank
PO Box 59231
Minneapolis, MN 55459-0228

Platinum Master Card
PO Box 15902
Wilmington, DE 19850

Central Burial Services
404 Alfred Avenue NW
Wadena, MN 56482

Household Mortgage Services
PO Box 11035
Orange, CA 92856

Mark A. Behrens & Paula K. Behrens
14936 Co. Rd. 18
Park Rapids, MN 56470

Security State Bank
PO Box 311
Sebeka, MN 56477

Victorias Secret
PO Box 182128
Columbus OH 43218

Wells Fargo
PO Box 6426
Carol Stream, IL 60197

Sally Mae Servicing
PO Box 4600
Wilkes-Barre, PA 18773-4600

MBNA America
PO Box 15464
Wilmington, DE 19886-5019

State Bank of Park Rapids
PO Box 31
Park Rapids, MN 56464

Fleet Business Card
PO Box 15624
Wilmington, DE 19850

Herbergers
PO Box 10327
Jackson, MS 39289

Capital One
PO Box 60000
Seattle, WA 98190-6000

MBNA America
PO Box 15019
Wilmington, DE 19886-5019

JC Penney
PO Box 981131
El Paso, TX 79998


US Bank - BKY Dept.
5065 Wooster Road
Cincinnati, OH 45226

American Express
PO Box 1270
Newark, NJ 07101-1270

I C System
PO Box 64808
St. Paul, MN 55164

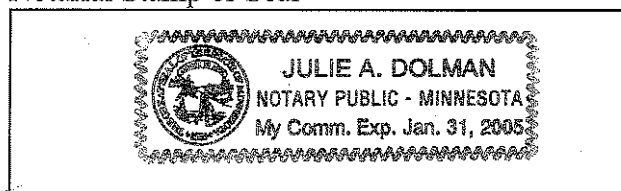
Luther P. Nervig
PO Box 647
Wadena, MN 56482-0647


Cardini-Behrens Funeral Home
PO Box 129
Menahga, MN 56464


Colleen Ouimet

Subscribed and sworn to before me this 28th day of September, 2004.

Notarial Stamp or Seal




Notary Public

AFFIDAVIT OF SERVICE

STATE OF MINNESOTA)
) ss.
COUNTY OF DOUGLAS)

Colleen Ouimet, of the City of Alexandria, County of Douglas, in the State of Minnesota, being duly sworn, says that on the 28th of September, 2004, she served the attached :

1. Notice of Hearing and Motion for Entry of Order Granting Expedited Relief and Authorizing Debtors to Satisfy Prepetition Claims of Certain Creditors.
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3. Order Granting Expedited Relief and Authorizing Debtors to Satisfy Prepetition Claims of Certain Creditors.

on the following by faxing a copy thereof to the facsimile number listed below:

Habbo G. Fokkena
United States Trustee
U.S. Courthouse, Suite 1015
300 South Fourth Street
Minneapolis, MN 55415
Fax: 612-664-5516

Ms. Sara Wencil
Office of the United States Trustee
U.S. Courthouse, Suite 1015
300 South Fourth Street
Minneapolis, MN 55415
Fax: 612-664-5516

First National Bank of Menahga
Attn: Mr. Roger Hollrud
PO Box 250
Menahga, MN 56464
Fax: 218-564-5125

Luther P. Nervig
PO Box 647
Wadena, MN 56482-0647
Fax: 218-631-9078

Security State Bank
PO Box 311
Sebeka, MN 56477
Fax: 218-837-5094

American National Bank
PO Box 472
Alexandria MN 56308
Fax: 320-762-5331

Donahue Harley Davidson
3555 Shadowwood Dr NE
Sauk Rapids MN 56739
Fax: 320-251-5168

Household Mortgage Services
PO Box 11035
Orange, CA 92856
Fax: 813-571-8637

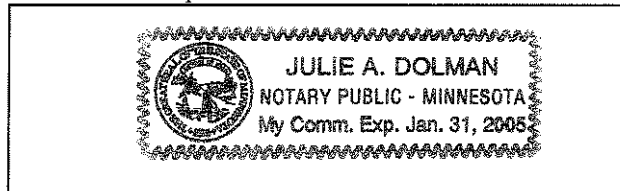
John Deere Credit
PO Box 77000
Detroit, MI 48277-0039
Fax: 800-732-0259


State Bank of Fargo
Attn: Shelly Ritterman
PO Box 10877
Fargo, ND 58106-0877
Fax: 701-298-1509


Colleen Ouimet

Subscribed and sworn to before me this 28th day of September, 2004.

Notarial Stamp or Seal




Notary Public